



Ninety-Eighth Legislature - First Session - 2003
Committee Statement
LB 790

Hearing Date: February 11, 2003

Committee On: Urban Affairs

Introducer(s): (Landis)

Title: Adopt the State Natural Gas Regulation Act and repeal the Municipal Natural Gas Regulation Act

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

6	Yes	Senators Combs, Connealy, Hartnett, Janssen, Landis & Schimek
1	No	Senator Friend
0	Present, not voting	
0	Absent	

Proponents:

Senator Dave Landis
Chris Dibbern
Bill Patterson
Michael Nolan
Wally Baird
Sheryl Lindau
Lynn Rex

Representing:

Introducer
NMPP Energy
City of Oshkosh
City of Norfolk
City of Alliance
City of Wayne
League of NE Municipalities

Opponents:

Steve Pella
James G. Flaherty
Alan Dietrich
Daniel Crouchley
Les Meyer
Gus Skovgard

Representing:

Aquila, Inc.
Aquila, Inc.
NorthWestern Energy
MUD
Kinder Morgan, Inc.
MidAmerican Energy

Neutral:

Joel Pedersen
John Erickson
Lowell Johnson

Representing:

City of Lincoln
Governor's Policy Research Office
Nebraska PSC

Summary of purpose and/or changes:

This bill is a proposal to enact the State Natural Gas Regulation Act for the purpose of providing for regulation of natural gas prices and service by the Public Service Commission. It would repeal the current Municipal Natural Gas Regulation Act and would finance the new system through an excise tax upon natural gas. The bill also repeals the current sales and use tax on natural gas but would set the excise tax at a level sufficient to avoid general fund losses resulting from the repeal.

This legislation is modeled after the law governing natural gas regulation in Kansas. It represents a comprehensive regulatory scheme in which the Public Service Commission would assume full responsibility not merely for the regulation of the rates charged for natural gas service but also for the terms and conditions of such service as well.

The Commission would assume responsibility for all matters filed with the Commission and would have the authority, upon its own motion, to initiate investigations and open cases involving all aspects of natural gas service by investor-owned utilities.

Municipally owned or operated systems or metropolitan utilities districts operating within their corporate limits or boundaries would not be subject to the jurisdiction of the commission. The bill does not change existing law regarding the boundaries or authority to expand them by metropolitan utilities districts and retains the existing provisions governing expansion disputes (which are currently subject to the jurisdiction of the commission).

Natural gas utilities subject to jurisdiction of the commission would be required to obtain a certificate of convenience and necessity which would define the rights, duties, and responsibilities of the utility and the area which it serves. The utility could not operate without the certificate or beyond the authority granted by the certificate.

The act creates (section 55 et. seq.) a Citizens' Utility Ratepayer Board consisting of five members, independent of the Commission, which employs a consumer counsel whose function is to protect the interest of residential and small commercial ratepayers before the commission. The consumer counsel has broad authority to initiate cases before the commission and intervene in actions on behalf of the consumer classes listed.

The act also contains provisions which were part of the amendments to LB 806 adopted by the Urban Affairs Committee in 2002. In sections 62 and 63, provisions providing for local option rate regulation by negotiations with the local natural gas utility are set out. If a utility sought to initiate a rate adjustment, the cities in the current rate area served by the utility would have the option of informing the commission of their interest in negotiating the rate increase. If cities representing more than fifty percent of the customers in the rate area requested negotiations, commission activity on the filing would be suspended and the parties would have sixty days (subject to extension) to review and negotiate new rates. Cities would have available funds from a new revolving loan fund (successor to the existing loan fund) to hire professional assistance.

If the negotiations resulted in agreement on new rates between the cities and the utility, the commission would be obliged to accept the new rates as being valid on their face and in the public interest and would approve them.

The funding mechanism in the act (sections 81, 82, and 83) is one which was considered in the past two sessions by the Revenue Committee (LB 502 by Sen. Hilgert in 2001 and LB 1260 by Sen. Hartnett in 2002). The existing sales and use taxes on the "sale, lease, or rental of and the storage, use or other consumption in this state" of natural are repealed. In its place there is created an excise tax on the gross cubic feet of all sales, use, or other consumption of natural gas in Nebraska. The tax commissioner (with the assistance of PSC and the Energy Office)

would set the rate to be applied on a quarterly basis to generate an annual revenue of approximately eleven million dollars. This figure would approximately equal the existing revenue from the sales tax plus additional funds (amounting to just under one million dollars) to finance the new responsibilities of the PSC and the CURB in natural gas regulation.

Explanation of amendments, if any:

Basically, the committee amendments do four things.

First, a new section is added which grants the Public Service Commission the full power, authority, and jurisdiction to supervise natural gas public utilities and to do all things necessary for the exercise of such power, authority, and jurisdiction. This section also reaffirms that current statutes governing boundary disputes between a metropolitan utilities district and an investor-owned utility (57-1301 to 57-1307) are to be considered an integral part of the general grant of authority to the PSC for natural gas regulation.

Second, the amendment incorporated two new sections into the act dealing with the certification of aggregators and competitive natural gas providers (those engaged purely in the sale of natural gas to ultimate consumers). Modeled after provisions from the State of Iowa, they grant the authority to the PSC to insure that consumers are protected and that gas marketers are properly qualified and capable of providing service.

An additional set of amendments clarifies the existing legislation to insure that interstate pipelines are exempted from state jurisdiction (since they are already subject to regulation by the Federal Energy Regulatory Commission and any serious attempt by the state to regulate them would almost certainly be an unconstitutional violation of the Commerce Clause).

Finally, the definition of what constitutes a regulated “public utility” under the Act is amended to clarify the exemption from regulation granted to municipally-owned and operated utilities and metropolitan utilities districts. The amendment makes clear that such municipal systems and utilities districts are not public utilities regarding their operations within their formal boundaries and within any area outside those boundaries where customers receive natural gas at the same rates and upon the same service and conditions as customers located within those formal boundaries.

Senator D. Paul Hartnett, Chairperson